IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.163 OF 2006

Shankar Namdeo Gaikwad ...Appellant
Vs.
Narhari Namdeo Gaikwad ...Respondent

Mr Ajay A. Joshi for the Appellant.
Mr G.S. Godbole for the Respondent.

CORAM : A. S. OKA, J.
DATE : MARCH 06, 2006.

P.C.:

1. Heard Shri Joshi appearing for the Appellant and Shri Godbole for the Respondent.

2. After having heard the Advocates appearing for the parties, I find that no substantial question of law arises in this Second Appeal. Shri Joshi appearing for the Appellant submitted that the son of the Appellant who deposed as power of attorney holder had infact filed the suit on behalf of the Appellant as his power of attorney holder. He, therefore, submitted that the Appellate Court could not have relied upon the decision of the Apex Court in the case of Janaki Vasudeo Bhojwani Vs. Indusind Bank Ltd. reported in (2005)2 Supreme Court Cases, Page 217.

3. In my view, the Appellate Court was right in observing that the Appellant-Plaintiff has claimed

right of way on the basis of agreement between the parties which was allegedly arrived at in the year 1989 and the son of the Appellant who deposed on behalf of the Appellant was only ten to eleven years old in the year 1989. The Appellate Court, therefore, held that the son of the Appellant was not expected to have personal knowledge of the agreement between the parties.

4. The Appellate Court rightly observed that the Appellant cannot claim any right of way on the basis of agreement as the Agreement was not established. The Appellant also relied upon a writing. However, the said writing has not been duly proved.

5. No substantial question of law arises. The Second Appeal is dismissed with no orders as to costs.

JUDGE